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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. CORNELIUS HALL, Defendant and Appellant.	A153668 (San Mateo County Super. Ct. No. 17-NF-013276-A)

After the trial court denied a motion by defendant Cornelius Hall to suppress evidence discovered during a probation search of his car, defendant pleaded no contest to possession of a firearm by a felon and admitted a probation violation. On appeal, he contends the trial court erred in denying his suppression motion. We disagree, and we affirm.

BACKGROUND

Procedural Background

An information filed November 22, 2017 charged defendant with possession of a firearm by a felon, possession of ammunition by a felon, and possession of a large-capacity magazine, all felonies. The charges stemmed from an incident three weeks earlier in which a police officer found a firearm in defendant's car when the officer searched the car pursuant to a probation search condition.

Defendant filed a motion to suppress the firearm on the ground the search violated his rights under the Fourth Amendment. Following a hearing, the trial court denied the motion.

Pursuant to a negotiated disposition, defendant pleaded no contest to the firearm possession charge and admitted a probation violation, and the two remaining charges were dismissed. He was sentenced to three years' probation with one year in county jail (with the potential for six months of work furlough), and his probation was revoked and reinstated on the same terms and conditions.

This timely appeal followed.

Hearing on Defendant's Motion to Suppress

South San Francisco Police Officer Grable Ramirez testified that on October 29, 2017, he was on patrol in East Palo Alto with Foster City Police Officer Grimaldi. Officer Ramirez pulled into a gas station, and, as was his regular practice, began running DMV checks on cars in the parking lot, looking for stolen vehicles and vehicles with expired or suspended registration. About one minute after pulling into the station, Officer Ramirez saw defendant pumping gas. He ran a records check on the car, which identified defendant as the registered owner. Confirming from a DMV photo that defendant was the man pumping gas, the officer ran a records check on defendant to determine if he was on probation or had any outstanding warrants, again something the officer routinely did when he was checking license plates. The records check revealed defendant was on probation with a search condition for a weapon-related offense.

By the time Officer Ramirez had run the records check on defendant, defendant had finished pumping gas and was driving away with two passengers in his car. The officer pulled out, followed defendant, and made a traffic stop about a block from the gas station. Defendant immediately pulled over. Officer Ramirez approached the driver's side of defendant's car, while Officer Grimaldi approached the passenger side. Officer Ramirez told defendant the reason for the stop was his search condition, and defendant acknowledged he was on probation and handed the officer his driver's license. The officers asked defendant and his passengers to step out of the car and then searched them. Officer Ramirez searched defendant's car and found a firearm underneath the driver's seat.

During the five-minute contact with defendant, both officers were "[n]ormal, casual" and not aggressive. Defendant was compliant when Officer Ramirez asked him to step out of the car and when he did the pat search. Officer Ramirez acknowledged defendant was driving legally, the car was properly registered, and the only reason he stopped defendant was to conduct a probation search. According to Officer Ramirez, if he determines someone is on probation with a search condition, "10 out of 10 times [he] will pull them over." This was not, the officer confirmed, the policy of the South San Francisco Police Department.

Officer Ramirez remembered making a U-turn at some point, although he did not recall that he did so in order to follow defendant's car into the gas station. Instead, he believed he made a U-turn after he left the gas station in order to make the traffic stop. The officer denied he pulled into the gas station because he was following defendant's car. He testified he first noticed defendant when defendant was pumping gas, he had not seen defendant before the car entered the gas station, and he did not recall seeing defendant get out of his car. Prior to stopping defendant's car, Officer Ramirez did not know the ethnicity of the two passengers, who, like defendant, were African American.

David Bush testified in support of defendant's motion. According to Bush, who was one of the passengers in defendant's car, they were driving down University Avenue when he saw a police car on Bay Road, a street that intersected University Avenue. They passed in front of the police car, which then turned right on University Avenue and traveled in the opposite direction of them. After they passed through the intersection, Bush lost sight of the police car, but less than a minute later, defendant said the police were behind them, prompting Bush to turn and observe a police car behind them.[1] The police car followed them into the gas station. Bush believed it was the same police car they had passed in the intersection of University Avenue and Bay Road because there were no other cars on the road at that time.

[1] Over the prosecutor's objection, the court allowed this testimony to provide context for Bush's actions and observations but not for the truth of the matter asserted.

Defendant pulled up to a pump and was putting gas in his car when the police car pulled in and backed into a parking spot. When defendant was finished pumping gas, they left, and the police car pulled out of the station right behind them. Approximately five minutes passed between when defendant pulled into the gas station and then pulled out again.

Within a minute of them leaving the gas station, the police car's lights were activated and defendant was pulled over. Officer Ramirez told them he was with the gang task force, had run defendant's license plate and discovered defendant was on probation, and was making a probation stop. He asked them to get out of the car, and they were searched for weapons. Bush confirmed that Officer Ramirez was not aggressive, did not yell at defendant, and did not have his gun drawn, describing the officers as "pretty cool" and "pretty nice about the whole thing."

After hearing testimony, the court issued its ruling. It began by noting that it had reviewed the primary cases on which the parties relied in their briefs, namely, *People v. Medina* (2007) 158 Cal.App.4th 1571 (*Medina*), *People v. Bravo* (1987) 43 Cal.3d 600 (*Bravo*), and *People v. Cervantes* (2002) 103 Cal.App.4th 1404 (*Cervantes*). Based on those cases, the court understood the applicable law to be that when an individual is subject to a probation search condition, an unreasonable search is one that was conducted in a harassing, arbitrary and capricious, or unreasonable manner. The court found there was no evidence Officer Ramirez's search was executed in a harassing or unreasonable manner.

Counsel for defendant did not disagree with that, but argued the problem was that "there had to be some reason [defendant's] car was being followed," and he submitted it was because the three occupants were African American. And he believed that Officer Ramirez's practice of searching everyone with a probation condition rendered the search arbitrary:

"[He] basically testified that every time, every time he gathers information that someone has a search condition—and he was giving his own testimony. He was at the

gas station; looking around for cars; typing into his thing; and he's looking for stolen cars; he's looking for expired licenses, expired tags, et cetera.

"But the one thing he did testify to is that he exercises his authority to execute the search condition on everybody. That's what he said. At every time. 10 out of 10 was his mathematical calculation. [¶] . . . I, in fact, argue that is arbitrary. That is unreasonable in that context. And the reason I say that is because if you read the cases that are in the People's opposition, they talk about when you can execute the search. And that there is a degree—it may be limited; I certainly have read the cases—a degree of privacy that a probationer still has. It's not completely gone simply because you have a search condition.

"And based on the facts of this case, in which every time he comes—meaning Officer Ramirez—comes in contact or gathers information that a probationer or a person is on probation with a search condition, he executes the warrant.

"That's not discretion. That's not based on any level of suspicion, absolutely nothing, other than the person is a member of a class of people who have a search condition.

"And that's what I find arbitrary."

The prosecutor disagreed, responding that it was "somewhat offensive" for defense counsel to suggest the stop was racially motivated. Beyond that, he argued Officer Ramirez was credible in his testimony that he did not recall crossing in front of defendant's car prior to pulling into the gas station, that once in the gas station he ran records checks on all of the cars at the station to look for stolen vehicles and infractions, and that he checked defendant's car just like he did the other cars at the station.

The court then denied defendant's motion. It declined to address defense counsel's argument about Officer Ramirez's general practices, declaring, "I have to look at what happened here. I'm not considering, I'm not making a proclamation about every time." Noting Officer Ramirez's testimony that he knew defendant was on probation with a search condition and had a conviction for a weapon-relate offense, the court found the search was not arbitrary or capricious.

DISCUSSION

The Applicable Law and Standard of Review

In challenging the trial court's denial of his suppression motion, defendant fundamentally argues that the trial court applied the wrong legal standard. As noted, relying on *Medina, supra*, 158 Cal.App.4th 1571, *Bravo, supra,* 43 Cal.3d 600, and *Cervantes, supra,* 103 Cal.App.4th 1404, the trial court analyzed the search to determine if it was harassing, arbitrary, or executed in an unreasonable manner. According to defendant, however, federal Constitutional law requires that the police officer have a reasonable suspicion of criminal activity before he or she can search a probationer with a search condition. Absent a reasonable suspicion of criminal activity, defendant reasons, the officer has the discretion to conduct probation searches based on the race of the probationer, which is arbitrary and thus in violation of the Fourth Amendment prohibition against unreasonable searches. In support, defendant relies on *United States v. Knights* (2001) 534 U.S. 112 (*Knights*), which he urges us to follow. *Knights* does not govern the circumstances here, and California law is contrary to defendant's position.

Our Supreme Court has unambiguously held that a search of a probationer with a search condition does not require reasonable suspicion of criminal activity. (*Bravo, supra,* 43 Cal.3d at p. 611.) *Medina, supra,* 158 Cal.App.4th at pp. 1575–1577 explains the rationale for this holding:

"In California, probationers consent in advance, as a condition of their probation, to warrantless searches and seizures in exchange for the opportunity to avoid serving a state prison term. [Citations.] Warrantless searches of probationers are justified because they aid in deterring further offenses by the probationer and in monitoring compliance with the terms of probation. [Citations.] 'By allowing close supervision of probationers, probation search conditions serve to promote rehabilitation and reduce recidivism while helping to protect the community from potential harm by probationers. [Citation.]' [Citation.]

"A probationer's consent is considered 'a complete waiver of that probationer's Fourth Amendment rights, save only his right to object to harassment or searches

conducted in an unreasonable manner. [Citation.]' [Citation.] ' "[A] probationer who has been granted the privilege of probation on condition that he submit at any time to a warrantless search may have no reasonable expectation of traditional Fourth Amendment protection." [Citation.] Consequently, "when [a] defendant in order to obtain probation specifically agree[s] to permit at any time a warrantless search of his person, car and house, he voluntarily waive[s] whatever claim of privacy he might otherwise have had." [Citation.]' [Citation.] Accordingly, the California Supreme Court has held that a search of a probationer pursuant to a search condition may be conducted *without any reasonable suspicion of criminal activity* and that such a search does not violate the Fourth Amendment. ([*Bravo, supra,*] 43 Cal.3d at pp. 607–609, 611 [probation search pursuant to search condition does not require reasonable suspicion].)

"As already mentioned, there are some limitations on the probation search. First, '[a] waiver of Fourth Amendment rights as a condition of probation does not permit searches undertaken for harassment or searches for arbitrary or capricious reasons.' [Citation.] A search is arbitrary and capricious when the motivation for it is unrelated to rehabilitative, reformative or legitimate law enforcement purposes, or when it is motivated by personal animosity toward the probationer. It must be reasonably related to the purposes of probation. [Citations.] In addition, a search could become unconstitutionally unreasonable if conducted too often or at an unreasonable hour, or if unreasonably prolonged, or if conducted for other reasons establishing arbitrary or oppressive conduct by the searching officer. [Citation.] Finally, the officer must be aware of the search condition before conducting the search; after-acquired knowledge will not justify the search. [Citation.]

"In summary, under California law, a search conducted pursuant to a known probation search condition, even if conducted without reasonable suspicion of criminal activity, does not violate the Fourth Amendment as long as the search is not undertaken for harassment or for arbitrary or capricious reasons or in an unreasonable manner. (*Bravo, supra,* 43 Cal.3d at p. 610.)" (*Medina, supra,* 158 Cal.App.4th at pp. 1575–1577, fns. omitted.)

Not only is California law clear that suspicion of criminal activity is not required, the authority on which defendant relies in advocating otherwise—*Knights*, *supra*, 534 U.S. 112—is inapposite.

In *Knights*, *supra*, 534 U.S. 112, defendant was suspected of committing acts of vandalism at power company facilities. Knowing defendant was subject to a probation search condition, the police conducted a warrantless search of his apartment, recovering items consistent with the vandalism. Defendant moved to suppress the evidence, the district court granted the motion on the ground that the search was for "investigatory" rather than "probationary" purposes, and the Court of Appeals affirmed. (*Id.* at pp. 114–116.)

The United States Supreme Court reversed. It observed that the "touchstone of the Fourth Amendment is reasonableness, and the reasonableness of a search is determined 'by assessing, on the one hand, the degree to which it intrudes upon an individual's privacy and, on the other, the degree to which it is needed for the promotion of legitimate governmental interests.' " (*Knights*, *supra*, 534 U.S. at pp. 118–119.) It balanced those competing interests and concluded that "[w]hen an officer has reasonable suspicion that a probationer subject to a search condition is engaged in criminal activity, there is enough likelihood that criminal conduct is occurring that an intrusion on the probationer's significantly diminished privacy interests is reasonable." (*Id.* at p. 121.) And because the search of Defendant's apartment was supported by reasonable suspicion of criminal activity, the court held the search was reasonable within the meaning of the Fourth Amendment. (*Id.* at p. 122.) In reaching this result, the court expressly acknowledged it was not deciding "whether the probation condition so diminished, or completely eliminated, Knights's reasonable expectation of privacy (or constituted consent . . .) that a search by a law enforcement officer without any individualized suspicion would have satisfied the reasonableness requirement of the Fourth Amendment. The terms of the probation condition permit such a search, but we need not address the constitutionality of a suspicionless search because the search in this case was supported by reasonable suspicion." (*Id.* at p. 120, fn. 6.)

Defendant urges us to follow *Knights* here and "return to the balancing test mandated" by that case. But, as noted above, and as defendant concedes, *Knights* did not consider the very proposition that would be relevant here: whether reasonable suspicion of criminal activity is required for a search pursuant to a probation condition. The case is thus irrelevant for our purposes, and we shall adhere to the well-established California authority holding that a police officer need not have a reasonable suspicion of criminal activity before searching a probationer subject to a protection search condition.

As to the applicable standard of review, when we review an order denying a suppression motion, we defer to the court's express and implied factual findings that are supported by substantial evidence (*People v. Hughes* (2002) 27 Cal.4th 287, 327; *People v. Gomez* (2005) 130 Cal.App.4th 1008, 1014), and we review the evidence in the light most favorable to the trial court's ruling. (*People v. Woods* (1999) 21 Cal.4th 668, 673; *Gomez*, at p. 1014.) "Whether a search is constitutionally reasonable, however, is a legal question upon which we exercise our independent judgment." (*Medina*, *supra*, 158 Cal.App.4th at p. 1575; accord, *Woods*, at pp. 673–674.)

Officer Ramirez's Search Did Not Violate the Fourth Amendment

Applying the foregoing legal principles here, we conclude the trial court did not err in denying defendant's suppression motion, as the search was not harassing, arbitrary, or executed in an unreasonable manner. Construing the record in favor of the trial court's ruling, the evidence showed that Officer Ramirez pulled into the gas station parking lot, backed into a parking spot, and ran records checks on the vehicles at the gas station in order to locate stolen vehicles or other vehicle infractions. One vehicle at the station was the car into which defendant was pumping gas. Officer Ramirez determined from defendant's DMV photo that he was the registered owner of that car, and a further records check informed him that defendant was on probation with a search condition for a weapon-related offense. Accordingly, Officer Ramirez followed the car out of the gas station and, as was his practice, initiated a traffic stop in order to conduct a probation search of defendant and his car. Officer Ramirez and his fellow officer were not aggressive, described by defendant's passenger as "pretty cool" and "pretty nice about

the whole thing." Officer Ramirez testified that he did not notice defendant's car when it crossed in front of him at the intersection of University Avenue and Bay Road; that he did not believe he made a U-turn to follow defendant's car into the gas station but rather made a U-turn when he exited the station in pursuit of defendant; and that he was unaware of the ethnicity of defendant's passengers until he stopped defendant's car. Under these circumstances, the trial court did not err in finding the search was reasonable.

Defendant asserts three arguments as to why the search was in fact arbitrary. First, he challenges Officer Ramirez's practice of searching "10 out of 10" probationers who have a search condition, contending the Constitution prohibits such arbitrary determination by a police officer of who to stop and search. He submits that requiring a reasonable suspicion of criminal activity eliminates the alleged arbitrariness that occurs as a result of officer discretion. In claimed support, defendant quotes *Delaware v. Prouse* (1979) 440 U.S. 648, in which the court discussed the imposition of a reasonableness standard to eliminate officer discretion. (*Id.* at pp. 653–655.) That case did not involve the search of a probationer with a search condition and has no application here.

Defendant also claims that California "cases addressing probation searches . . . generally involve some basis for a search other than the mere existence of a search condition." But the very cases he cites expressly recognize that suspicion of criminal activity is not required. (See, e.g., *Bravo, supra*, 43 Cal.3d at p. 611 ["a search condition of probation that permits a search without a warrant also permits a search without 'reasonable cause,' as the former includes the latter"]; *Medina, supra,* 158 Cal.App.4th at p. 1580 ["Under this state's body of law, a suspicionless search pursuant to a probation search condition is not prohibited by the Fourth Amendment"].)

Second, defendant claims the search was arbitrary because the evidence established that defendant was targeted because he and his passengers were African American. He submits that Officer Ramirez's testimony made "little sense" and was "internally inconsistent" because he could not have run a records check on every car at the gas station in 60 seconds, as he claimed, nor could he have run a check on defendant

after defendant pulled out of the station and still had time to stop defendant's car within one block of the station. He also claims Bush's testimony established that the police performed a baseless traffic stop. While defendant's argument regarding Officer Ramirez's motive is mere speculation, there was substantial evidence that the stop was not in fact racially motivated: the officer's testimony that he did not know the race of defendant's passengers, that he did not make a U-turn and follow defendant's car into the gas station, and that he ran a records check on all cars in the gas station, not just defendant's. Further, there was no testimony regarding how long a records search takes, nor regarding how many cars were at the gas station, other than Bush's nonspecific testimony that there were "a lot." Thus, defendant's theory that Officer Ramirez ran a records check on him because of his race does not find support in the record.

Finally, defendant argues the search was arbitrary because absent a violation of the Vehicle Code or other law, Officer Ramirez could not legally stop defendant. In arguing that this rule applies even to a probationer with a search condition, defendant relies on *Cervantes*, *supra*, 103 Cal.App.4th 1404. Defendant misconstrues *Cervantes*.

In *Cervantes, supra*, 103 Cal.App.4th 1404, defendant was stopped by police officers for failing to signal a turn. After a records check showed he was on probation with a search condition, the police searched his car, where they found a firearm and drugs, and then searched his home, where they found additional drugs. Defendant sought to suppress the evidence on the ground that the search was arbitrary because he did not commit a turn signal violation such that there was no basis for the stop. At a hearing on his motion, defendant offered to call three witnesses to prove there was no turn signal violation. The prosecutor countered that even if there was no violation, defendant's suppression motion lacked merit because he was subject to a probation search condition. Agreeing with the prosecutor, the court declined to hear defendant's evidence on the ground that any illegality in the stop was irrelevant due to the search condition, and denied the motion. (*Id.* at pp. 1406–1407.)

The Court of Appeal reversed, holding that the trial court should have heard the evidence and decided whether the officers stopped defendant for a traffic violation. If it

concluded they did not, it then should have determined whether their action was arbitrary, capricious or harassing. (*Id.* at p. 1408.) The court reasoned that a "mere legal or factual error by an officer that would otherwise render a search illegal, e.g., a mistake in concluding that probable cause exists for an arrest, does not render the search arbitrary, capricious or harassing. If it did, then we would have no occasion to struggle with the doctrine of search authorization based on an unknown search condition. This is so since recourse to the doctrine is necessary only when no other legitimate basis supports the search." (*Ibid*.)

As can be seen, *Cervantes* did not hold, as defendant would have it, that a police officer cannot effect a traffic stop of a probationer that the officer knows is subject to a search condition unless the officer first observes a Vehicle Code violation or other unlawful conduct. And under circumstances like those here—where the officer knew prior to initiating the traffic stop that defendant was subject to a search condition—courts have upheld the suspicionless stop and search provided it was not otherwise harassing, arbitrary, or unreasonable.

DISPOSITION

The judgment of conviction is affirmed.

_____
Richman, Acting P.J.

We concur:

_____
Stewart, J.

_____
Miller, J.

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